

# Order

Michigan Supreme Court  
Lansing, Michigan

March 21, 2006

Clifford W. Taylor,  
Chief Justice

ADM File No. 2005-12

Michael F. Cavanagh  
Elizabeth A. Weaver  
Marilyn Kelly  
Maura D. Corrigan  
Robert P. Young, Jr.  
Stephen J. Markman,  
Justices

Proposed Amendment  
of Rules 5.104, 5.402,  
and 5.403 to the  
Michigan Court Rules

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On order of the Court, this is to advise that the Court is considering amendments of Rules 5.104, 5.402, and 5.403 of the Michigan Court Rules. Before determining whether the proposal should be adopted, changed before adoption, or rejected, this notice is given to afford interested persons the opportunity to comment on the form or the merits of the proposal, or to suggest alternatives. The Court welcomes the views of all. This matter also will be considered at a public hearing. The notices and agendas for public hearings are posted at [www.courts.michigan.gov/supremecourt](http://www.courts.michigan.gov/supremecourt).

Publication of this proposal does not mean that the Court will issue an order on the subject, nor does it imply probable adoption of the proposal in its present form.

[Additions are indicated in the text that follows in underlining;  
deletions are indicated in overstriking.]

Rule 5.104 Proof of Service; Waiver and Consent; Unopposed Petition

(A) Proof of Service.

- (1) Whenever service is required by statute or court rule, a proof of service must be filed promptly. The proof of service must be filed before a hearing on a matter and at the latest before a hearing to which the paper relates or at the time the paper is required to be filed with the court if the paper does not relate to a hearing. Whenever relief is granted ex parte, a proof of service for the petition and order must be filed as soon as possible after the court hears the request for relief and at the latest 10 days after the date of service or before a subsequent hearing on the matter, whichever period is shorter. The proof of service must include a description of the papers served, the

date of service, the manner and method of service, and the person or persons served.

(2)-(4) [Unchanged.]

(B)-(C) [Unchanged.]

#### Rule 5.402 Common Provisions

(A)-(B) [Unchanged.]

(C) Responsibility for Giving Notice; Manner of Service. The petitioner is responsible for giving notice of hearing. Regardless of statutory provisions, an interested person may be served by mail, by personal service, or by publication when necessary; however, if the parent of a minor can be located, or if a person who is the subject of the petition is 14 years of age or older, notice of the initial hearing must be served on the parent or person personally unless another method of service is specifically permitted in the circumstances.

(D) [Unchanged.]

#### Rule 5.403 Proceedings on Temporary Guardianship

(A) [Unchanged.]

(B) Notice of Hearing, Minor. For good cause, the court may shorten the period for notice of hearing. ~~or may dispense with notice of a hearing for the appointment of a temporary guardian of a minor, except that the minor shall always receive notice if the minor is 14 years of age or older. In an emergency, or at the request of law enforcement, the state agency charged with the protection of minors, or that agency's designated agents, the court may proceed without notice of a hearing for the appointment of a temporary guardian of a minor, except that the minor shall always receive notice if the minor is 14 years of age or older. If the notice period is shortened or eliminated, the court shall state on the record and indicate on the order what circumstances justify shortening or eliminating notice. Unless the parents of the minor appear at the hearing, any order granting a temporary ex parte guardianship after a notice of hearing was shortened or eliminated shall state clearly and prominently (1) that the order is a temporary, ex parte order, and (2) the date and place for a hearing on the matter to be held within 56 days after the order was issued. The petitioner shall serve the temporary, ex parte order, notice of hearing, and initial petition for~~

guardianship on each parent by personal service pursuant to MCR 5.105(B)(1). If the parents cannot be located, service may be by first-class mail to each parent's last known address, or by publication as provided in MCR 5.105(A)(3) and 5.106, or by such means as directed by the court under MCR 5.105(A)(4).

(C)-(D) [Unchanged.]

Staff Comment: The proposed amendment of MCR 5.104(A)(1) would establish a time frame within which the proof of service must be filed when the court issues an ex parte order. The proposed amendment of MCR 5.402(C) would add the requirement of how service is to be made on a parent of a minor who is the subject of a petition when the whereabouts of the parent are known. The proposed amendment of MCR 5.403(B) would add the requirement of a subsequent hearing within 56 days if a temporary guardian is appointed for a minor by ex parte order and the parents of the minor are not present at the ex parte hearing.

The staff comment is not an authoritative construction by the Court.

A copy of this order will be given to the Secretary of the State Bar and to the State Court Administrator so that they can make the notifications specified in MCR 1.201. Comments on these proposals may be sent to the Supreme Court Clerk in writing or electronically by July 1, 2006, at P.O. Box 30052, Lansing, MI 48909, or [MSC\\_clerk@courts.mi.gov](mailto:MSC_clerk@courts.mi.gov). When filing a comment, please refer to ADM File No. 2005-12. Your comments and the comments of others will be posted at [www.courts.mi.gov/supremecourt/resources/administrative/index.htm](http://www.courts.mi.gov/supremecourt/resources/administrative/index.htm).



I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 21, 2006

*Corbin R. Davis*  
Clerk